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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re MARILYN C., A Person Coming Under the Juvenile Court Law.	
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. CARLOS F., Defendant and Appellant.	B270911 (Los Angeles County Super. Ct. No. DK12385)

APPEAL from an order of the Superior Court of Los Angeles County, Debra L. Losnick, Commissioner. Affirmed.

William Hook, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary Wickham, County Counsel, R. Keith Davis, Assistant County Counsel and Stephen D. Watson, Deputy County Counsel, for Plaintiff and Respondent.

Appellant Carlos F. contends the juvenile court erred in sustaining a jurisdictional finding that his two-year old daughter, Marilyn C., was at risk of harm from his conduct based on past domestic violence. We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Jennifer C. (Mother) has been married to Omar Z. since 2004. They have three children, Nathan Z., Gabriella Z., and Emily Z., who range in age from 6 to 10. In 2012, Mother and appellant had a brief relationship that resulted in Mother's becoming pregnant with Marilyn. In December 2012, following an incident in which appellant slammed Mother's face into a wooden bed frame and broke her nose, he was convicted of inflicting corporal injury on a spouse or cohabitant. He served more than a year in jail and six months in an INS detention center. In February 2015, he completed a 52-week domestic violence program. In March 2013, shortly after appellant's release from jail, Mother obtained a 10-year restraining order protecting herself from appellant. She said she continued to be terrified for her life, and that her emotional state was causing the children to suffer. Until the underlying proceedings arose, appellant

had had no contact with his daughter, who was being raised by Mother and Omar.

In July 2015, the Department of Children and Family Services (DCFS) received a referral that Omar had physically abused Mother. The caseworker interviewed Mother, the children and maternal family members and received confirming information, but also learned that both Mother and Omar had been arrested for attacking each other, that Omar had just obtained a temporary restraining order protecting him and the children from Mother, and that Mother had obtained a restraining order in 2012, protecting her and the children from Omar, which the parties ignored by getting back together before it expired.[1] After the investigation, the children were removed and placed with a maternal relative.

Interviewed for the jurisdictional report, Mother said the November 2012 domestic violence incident between her and appellant occurred when she and Nathan were at appellant's house, where she sometimes stayed. At the time, Mother was three months pregnant with Marilyn. The couple began arguing, and appellant said he was "going to fuck [her] up." He dragged her by the hair to the bed and slammed her face into its wood frame, breaking her nose.

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[1] Because neither Mother nor Omar appealed, we do not detail the evidence supporting the allegations pertaining to them.

Mother felt a great deal of pain and sensed blood gushing over her face. Appellant pulled her to her knees, said "'you should be afraid of me'" and threatened to break her "face and . . . ribs." Mother said appellant had hit her in the face on a previous occasion, causing swelling and bruising. In addition, appellant had once pulled Nathan's ear hard enough to cause bleeding.[2] Gabriella said she called appellant "C" because she "d[id]n't like saying his name because he is a bad person. He broke my mom's nose. She had to wear a cast around her nose. We saw her in the hospital. He pulled Nathan by his ear [when] [h]e was 3 . . . . He grabbed Nathan by his ear and really actually really did rip Nathan's ear." Nathan, several years younger than Gabriella, recalled appellant was "mean."

Appellant said the November 2012 altercation arose because Mother "'got out of hand'" and "'jumped on . . . him,'" and that she hit her nose on the bed frame when he pushed her off.[3] He had had no contact with Mother or Marilyn in

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[2] Mother's declaration in support of the restraining order contained similar allegations. She explained that in September 2012, while she and appellant were driving with two of her children in the backseat, he backhanded her four times on the left side of her face.

[3] Appellant made similar allegations in the 2013 declaration opposing Mother's request for a protective order. However, the police report noted that appellant admitted slamming Mother's head into the bed frame. The

(Fn. continued on next page.)

the three years since the incident, and was facing deportation as a result of his conviction.

At a hearing in October 2015, appellant requested a DNA test to establish his biological relationship to Marilyn. Mother objected, and later filed a declaration stating appellant had threatened to abduct Marilyn and flee with the girl to Mexico. The court granted the request, and the test established his parentage. Thereafter, both appellant and Omar sought presumed father status. The court found both to be presumed fathers. Appellant commenced weekly visits with Marilyn in January 2016.

At the February 2016 jurisdictional hearing, appellant asked that the allegations pertaining to him be dismissed. All the other parties, including counsel for the children, urged the court to sustain the allegations. The court sustained the allegations, finding true that appellant and Mother had a history of engaging in violent altercations, and that on one such occasion, appellant broke Mother's nose and threatened to kill her. The court also found true that Mother and Omar had a history of engaging in physical altercations in the presence of the children, and that Omar had assaulted both Mother and Nathan. The court found

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caseworker did not inquire about the September 2012 incident, but appellant had said in his 2013 declaration that Mother had hit and scratched him while he was driving and that he "had to defend [himself] . . . with [his] right hand . . . ."

that this conduct on the part of the parents "endanger[ed] the children's physical health and safety and place[d] [them] at risk of serious physical harm, damage [and] danger . . . ." The court found the proven allegations supported jurisdiction under Welfare and Institutions Code section 300, subdivision (a) (serious physical harm) and (b) (failure to protect).[4]

Appellant signed a case plan indicating he was willing to participate in counseling and a parenting program. The court found that appellant had made progress by completing the domestic violence program, but agreed he was in need of the services to which he had stipulated, and further instructed him to address anger management in his counseling. Appellant's visitation with Marilyn was to be monitored, with discretion to DCFS to liberalize. This appeal followed the court's issuance of its jurisdictional/dispositional orders.

DISCUSSION

In order to assert jurisdiction over a minor, the juvenile court must find that he or she falls within one or more of the categories specified in section 300. (*In re Veronica G.* (2007) 157 Cal.App.4th 179, 185.) DCFS bears the burden of proof under the preponderance of the evidence

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[4] Undesignated statutory references are to the Welfare and Institutions Code.

standard. (*Ibid.*; § 355, subd. (a).) On appeal, "'we must uphold the court's [jurisdictional] findings unless, after reviewing the entire record and resolving all conflicts in favor of the respondent and drawing all reasonable inferences in support of the judgment, we determine there is no substantial evidence to support the findings.'" (*In re J.N.* (2010) 181 Cal.App.4th 1010, 1022, quoting *In re Monique T.* (1992) 2 Cal.App.4th 1372, 1378.)

Here, the court found jurisdiction appropriate under section 300, subdivisions (a) and (b). A child is within the jurisdiction of the juvenile court under subdivision (a) if he or she "has suffered, or there is a substantial risk that [he or she] will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian." As pertinent here, subdivision (b) permits the court to adjudge a child a dependent of the juvenile court where "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child . . . ."

Where, as here, there is no evidence the child has suffered serious physical harm or neglect of any type, the agency is required to show that he or she is "at 'substantial risk' of 'suffer[ing] serious physical harm' inflicted nonaccidentally" by the offending parent (to support subdivision (a)), or "at 'substantial risk' of 'suffer[ing] serious physical harm'" caused by the offending parent's failure to protect him or her (to support subdivision (b)). (*In re*

Jonathan B. (2015) 235 Cal.App.4th 115, 119.) The basic question to be addressed in connection with a true finding under subdivision (a) is "whether circumstances at the time of the hearing subject the minor to the defined risk of harm." (*In re Nicholas B.* (2001) 88 Cal.App.4th 1126, 1134.) The same is true for subdivision (b). (See, e.g., *In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1396 ["The third element [of a true finding under subdivision (b)] . . . effectively requires a showing that at the time of the jurisdictional hearing the child is at substantial risk of serious physical harm in the future"].)

As numerous courts have held, exposing children to domestic violence can support a finding of detriment to the children sufficient to support a jurisdictional finding. (See, e.g., *In re T.V.* (2013) 217 Cal.App.4th 126, 134; *In re R.C.* (2012) 210 Cal.App.4th 930, 941; *In re E.B.* (2010) 184 Cal.App.4th 568, 576; *In re S.O.* (2002) 103 Cal.App.4th 453, 460-461; *In re Heather A.* (1996) 52 Cal.App.4th 183, 194.) Domestic violence in the household represents a failure to protect the children from the substantial risk of encountering the violence and suffering serious physical harm while it is occurring. (*In re Heather A.*, *supra*, at p. 194.) Moreover, "'children of these relationships appear more likely to experience physical harm from both parents than children of relationships without . . . abuse.'" "'[E]ven if they are not physically harmed, children suffer enormously from simply witnessing the violence between their parents. . . . [¶] [And] children of [a parent who abuses the

other parent] are likely to be physically abused themselves.'" (*In re E.B.*, *supra*, at p. 576; accord, *In re Sylvia R.* (1997) 55 Cal.App.4th 559, 562.)

Appellant contends the allegations pertaining to him did not support jurisdiction because the November 2012 domestic violence incident occurred three years prior to the jurisdictional hearing, he had completed a 52-week domestic violence program in the intervening years, and there had been no recent allegations of similar misconduct.[5] We disagree. Preliminarily, we point out that Mother reported not one, but two incidents of domestic violence in the brief

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[5] Respondent contends the appeal should be dismissed as nonjusticiable, as the court made its jurisdictional finding on multiple grounds that are uncontested. (See *In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.) As this court said in *In re M.W.* (2015) 238 Cal.App.4th 1444, 1452, we retain discretion to consider the merits of an appeal of individual jurisdictional findings when they could be prejudicial to the appellant or impact current or future dependency proceedings. (*Id.* at p. 1452; accord, *In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763; but see *In re I.A.* (2011) 201 Cal.App.4th 1484, 1492-1494 [father's appeal dismissed where he was not a presumed father, he did not challenge jurisdictional findings pertaining to mother and any impact of jurisdictional findings pertaining to him on current or future proceedings was, in the court's view, speculative].) In light of appellant's status as a presumed father and the potential impact of the jurisdictional finding on this and future proceedings, we elect to consider the merits.

period appellant and Mother were together, one of which occurred while they were driving and two of her children were in the backseat. In determining whether past domestic violence supports a current finding of jurisdiction, the court should look not only at how much time that has passed but at the degree of violence involved, whether it involved multiple incidents, whether the children were present or involved, and its long term impact on the children. (Cf. *In re Daisy H.* (2011) 192 Cal.App.4th 713, 717 [evidence of single incidence of domestic violence years prior to petition did not support jurisdiction where children showed no signs of abuse, denied ever witnessing father abuse mother, and had no fear of father].) Here, there were multiple incidents within a short period. One involved extreme violence while Mother was pregnant with Marilyn, threatening the health of both Mother and child. Another occurred in a moving automobile in the presence of two of the other children. There was also evidence that appellant physically abused Nathan during the same period. Even after three years, Gabriella remembered appellant as a "bad person" who broke Mother's nose and injured Nathan's ear. Nathan remembered him as "mean." Mother described the children as emotionally distraught when she sought the restraining order, a year after the incident occurred. Although it is true that there was no evidence of recurrence, it is also true that appellant was incarcerated or held in detention for more than a year and a half, and had had no contact with Mother or the children.

Appellant emphasizes his completion of the domestic violence program in 2015. Completion of such a program can serve as evidence that a party's propensity for domestic violence has been addressed and resolved. The evidence supports the court's finding that appellant was in need of additional services. He was not remorseful when he recalled the November 2012 incident, but continued to claim it was justified by Mother's actions. Thus, the court could reasonably conclude appellant was in need of additional counseling to ensure domestic violence would not recur, particularly now that he had become involved in Marilyn's life and faced the prospect of dealing with Mother on a regular basis.

DISPOSITION

The court's jurisdictional order is affirmed.

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MANELLA, J.

We concur:

WILLHITE, Acting P. J.

COLLINS, J.